

1 **12 PAGES**

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17 Chapter 11 Trustee

18 UNITED STATES BANKRUPTCY COURT
19 EASTERN DISTRICT OF CALIFORNIA
20 SACRAMENTO DIVISION

21 In re

22 Case No.: 09-29162

23 SK Foods, LP, a California limited partnership, et
24 al.

25 Chapter 11

26 Debtor.

27 BRADLEY D. SHARP, CHAPTER 11
28 TRUSTEE

Adversary Proceeding No.

29 Plaintiff,

30 vs.
31
32 SSC FARMS I, LLC, a California limited
33 liability company, and SSC FARMS II, LLC, a
34 California limited liability company, SSC
35 FARMING, LLC, a California limited liability
36 company.

37 **COMPLAINT TO QUIET TITLE,
38 FOR DECLARATORY RELIEF, AND
39 FOR TURNOVER OF PROPERTY OF
40 THE ESTATE**

41 Defendants.

1 Bradley D. Sharp (“Trustee”), the duly appointed and acting Chapter 11 trustee for the
2 estate of SK Foods, L.P., a California limited partnership, and RHM Industrial/Specialty Foods,
3 Inc., a California Corporation (collectively, “SK Foods” or “Debtors”) alleges as follows:

4 **PARTIES**

5 1. Bradley D. Sharp is the duly appointed and acting Chapter 11 trustee for
6 the Chapter 11 estate of SK Foods, L.P., a California limited partnership, and RHM
7 Industrial/Specialty Foods, Inc., a California Corporation.

8 2. Trustee is informed and believes that SSC Farms I, LLC (“SSC Farms I”)
9 is a California limited liability company with a principal place of business at 200 Sky Park
10 Drive, Monterey, California 93940. Its registered agent is Scott Salyer.

11 3. Trustee is informed and believes that SSC Farms II, LLC (“SSC Farms
12 II”) is a California limited liability company with a principal place of business at 200 Sky Park
13 Drive, Monterey, California 93940. Its registered agent is Scott Salyer.

14 4. The Trustee is informed and believes that SSC Farming, LLC (“SSC
15 Farming”) is a California limited liability company that according to public records maintains its
16 principal place of business at 1175 S. 19th Avenue, Lemoore, CA 92345. Its registered agent
17 resigned on September 19, 2009, and according to publicly available information, no new
18 registered agent has been designated.

19 5. Trustee is informed and believes that Defendants are owned, directly or
20 indirectly, by the Scott Salyer Revocable Trust (“SSR Trust”), the Stefanie Ann Salyer Trust
21 (“SAS Trust”), and the Carolyn Salyer Trust (“CGS Trust”) in the following percentages:

22 a. SSC Farms I:

23 • SSR Trust – 50%
24 • SAS Trust – 50%

25 b. SSC Farms II:

26 • SSR Trust – 50%
27 • SAS Trust – 50%

28 c. SSC Farming:

- 1 • SSR Trust – 60%
- 2 • SAS Trust – 20%
- 3 • CGS Trust – 20%

4 6. Stefanie Ann Salyer and Caroline Salyer are Scott Salyer's daughters.

5 7. Trustee is informed and believes that Scott Salyer is Trustee for the SSR

6 Trust and the SAS Trust.

7 8. Trustee is informed and believes that Scott Salyer, an entity controlled by

8 him, or those acting at his direction, operates, manages and/or controls SSC Farms I, SSC Farms

9 II, and SSC Farming.

10 9. Until approximately July 1, 2009, Scott Salyer served as the Debtors'

11 Chief Executive Officer. Scott Salyer and/or entities controlled by him or those acting at his

12 direction, operated, managed and/or controlled SK Foods until May 18, 2009.

13 **JURISDICTION AND VENUE**

14 10. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 157

15 and 1334. This adversary proceeding is a core matter pursuant to 11 U.S.C. § 157.

16 11. Venue is proper in the Eastern District of California pursuant to 28 U.S.C.

17 § 1409.

18 **FACTUAL BACKGROUND**

19 12. On or about May 7, 2009 (the "Petition Date"), Debtor filed a voluntary

20 petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et*

21 *seq.* (the "Bankruptcy Code").

22 13. Debtor SK Foods was in the business of processing and readying for

23 shipment tomatoes and other crops. To process the tomatoes, SK Foods generated large

24 quantities of waste water. In order to comply with applicable environmental, health, and safety

25 regulations, SK Foods was required to obtain permits issued by the California Regional Water

26 Quality Control Board authorizing the discharge of waste water onto specific parcels of land.

27 The Trustee is informed and believes and based thereon alleges that the California Regional

28 Water Quality Control Board permitting process ordinarily takes 12 to 24 months to complete.

1 14. The ownership and title to the lands upon which SK Foods discharged
2 waste water are the subjects of this Complaint.

The Westlands Water District Parcels

4 15. The Trustee is informed and believes and based thereon alleges that prior
5 to 2005, SK Foods discharged its wastewater on a parcel of land that is not the subject of this
6 complaint (“Prior Lemoore Discharge Parcel”). Said parcel was owned by an unrelated third
7 party. The Trustee is further informed and believes and based thereon alleges that SK Foods’
8 agreement with the owner of the Prior Lemoore Discharge Parcel was set to expire in 2006, and
9 that because SK Foods was unwilling to agree to the terms under which the owner of the Prior
10 Lemoore Discharge Parcel would consider a renewal or extension of that contract, SK Foods
11 determined that it was in its best interest to acquire land upon which it could discharge its
12 wastewater. The Trustee is further informed and believes and based thereon alleges that given its
13 importance to SK Foods’ operations, SK Foods specifically sought to acquire its own land so that
14 could assure itself of a continuous and reliable means of discharging wastewater, and that would
15 allow it to increase the volume of wastewater discharged in order to accommodate an expected
16 increase in the Lemoore plant’s production capacity.

17 16. On or about May 19, 2005, SK Foods made an offer to purchase several
18 contiguous parcels of land aggregating 2,602.28 acres from the Westlands Water District
19 (“WWD”).

20 17. On or about October 25, 2005, SK Foods and WWD entered into a certain
21 Real Estate Purchase and Sale Agreement and Escrow Instructions (the “Lemoore Wastewater
22 Parcel Agreement”). The Lemoore Wastewater Parcel Agreement identified approximately 30
23 specific parcels via assessor’s parcel identification numbers. A true and correct copy of the
24 Lemoore Wastewater Parcel Agreement and the exhibits thereto are attached hereto as **Exhibit**
25 **1.** The specific parcels identified in the Lemoore Wastewater Parcel Agreement that were to be
26 purchased by SK Foods are referred to herein as the “Lemoore Wastewater Parcel.”

27 18. The Lemoore Wastewater Parcel Agreement provides that SK Foods
28 would pay the sum of Four Hundred (\$400.00) Dollars per acre for the Lemoore Wastewater

1 Parcel, or an aggregate sale price of One Million Forty Thousand Nine Hundred-Twelve
2 (\$1,040,912.00) Dollars.

3 19. After October 25, 2005, several amendments were made to the Lemoore
4 Wastewater Parcel Agreement in order to extend the closing date to coincide with the expected
5 issuance of permits from the California Regional Water Quality Review Board. Each such
6 amendment was executed by SK Foods, LP.

7 20. The closing on the sale of the Lemoore Wastewater Parcel ultimately
8 occurred on or about September 13, 2007.

9 21. At the closing, title to the Lemoore Wastewater Parcel was *not transferred*
10 *to SK Foods*. Instead, title to the various parcels of the Lemoore Wastewater Parcel was taken in
11 the names of Defendants SSC Farms I and SSC Farms II. True and correct copies of the grant
12 deeds showing which parcels were allocated to SSC Farms I and SSC Farms II are attached
13 hereto as Exhibit 2 and Exhibit 3, respectively. The parcels of land transferred to SSC Farms I
14 are referred to herein as the “SSC Farms I Waste Water Lands,” and the parcels of land
15 transferred to SSC Farms II are referred to herein as the “SSC Farms II Waste Water Lands.”

16 22. No written assignment of the Lemoore Wastewater Parcel Agreement to
17 either SSC Farms I or SSC Farms II was ever executed by Debtor.

18 23. The Trustee is informed and believes and based thereon alleges that
19 neither SSC Farms I nor SSC Farms II paid any consideration to SK Foods in exchange for the
20 purported assignment of its rights under the Lemoore Wastewater Parcel Agreement.

21 24. The Trustee is informed and believes and based thereon alleges that SK
22 Foods’ SK Foods transferred funds to SSC Farms I, LLC and SSC Farms II, LLC prior to the
23 closing of the purchase of the Lemmore Waste Water Lands, and that some or all of said funds
24 were used by SSC Farms I and SSC Farms II to pay the purchase price for the Lemoore
25 Wastewater Parcel property from Westlands Water District.

26 25. On or about May 1, 2008, SSC Farms I and SSC Farms II entered into
27 certain agreements entitled “Discharge Agreements” pursuant to which SK Foods was permitted
28 to discharge waste water on the SSC Farms I and SSC Farms II Waste Water Lands. True and

1 correct copies of the Discharge Agreements are attached hereto as Exhibits 4 and 5, respectively,
2 and are incorporated herein by this reference.

3 26. The Discharge Agreements provided that SK Foods would pay SSC Farms
4 I and SSC Farms II an annual base discharge fee equal to Four Hundred (\$400.00) Dollars per
5 acre each year for a period of ten (10) years. The Discharge Agreements further provided that
6 the base fee for the discharge of wastewater would increase 15% every three years commencing
7 in 2011. Thus, the Discharge Agreements obligated SK Foods each year to pay a sum equal to
8 the purchase price paid to acquire the portions of the Lemoore Wastewater Parcel upon which
9 wastewater was discharged. Over the expected duration of the Lemoore Discharge Agreements,
10 SK Foods was obligated to pay Defendants SSC Farms I and SSC Farms II over Two Million Six
11 Hundred Twenty Thousand Nine Hundred-Twenty (\$2,620,920.00) Dollars, a sum
12 approximately two and one-half times the total purchase price paid for all of the land acquired
13 from WWD, before taking into account the scheduled increases in the discharge fees.

14 27. The Trustee is informed and believes and based thereon alleges that SK
15 Foods was the ultimate source of the funds used to acquire the Lemoore Wastewater Parcel, and
16 that the Lemoore Discharge Agreements constitute in economic substance vehicles through
17 which SK Foods would pay the entire purchase price and all expenses associated with ownership
18 of the Lemoore Wastewater Parcel.

19 28. The Trustee is informed and believes and based thereon alleges that Scott
20 Salyer was aware of the significance of the Lemoore Wastewater Parcel to SK Foods, that he
21 was aware of SK Foods contractual right to purchase the Lemoore Wastewater Parcel, and that
22 he was aware that by virtue of the series of transactions described in Paragraphs 15 through 27
23 that SK Foods' resources alone would be utilized to acquire the Lemoore Wastewater Parcel. By
24 virtue of this knowledge and his position as CEO of SK Foods, Scott Salyer was a fiduciary for
25 SK Foods, and as such, he had a duty to ensure that title to the Lemoore Wastewater Parcel was
26 taken in SK Foods name. Scott Salyer breached his fiduciary obligations to SK Foods by
27 causing or permitting title to the Lemoore Wastewater Parcel to be taken in the names of SSC
28 Farms I and SSC Farms II. Because Scott Salyer owned and controlled SSC Farms I and SSC

1 Farms II, and SSC Farms I and SSC Farms II were the instruments through which Scott Salyer
2 carried out his breach, SSC Farms I and SSC Farms II should be deemed Scott Salyer's alter
3 egos such that his breach of fiduciary obligations owed to SK Foods should be imputed to SSC
4 Farms I and SSC Farms II. Alternatively, by acting in concert with Scott Salyer to acquire the
5 Lemoore Wastewater Parcel, SSC Farms I and SSC Farms II aided and abetted Scott Salyer's
6 breach of his fiduciary duty to SK Foods.

7 29. The purported transfer of SK Foods' rights under the Lemoore Waste
8 Water Land Agreements frustrated the essential purpose underlying SK Foods entry into that
9 contract. It created a situation where SSC Farms I and SSC Farms II had the ability to control
10 Debtor's ability to operate. In 2009, SSC Farms I and SSC Farms II ultimately took advantage
11 of this situation by purporting to terminate Debtor's ability to discharge wastewater on those
12 lands.

The Rogers Parcel

14 30. On or about April 27, 2005, SS Farms, LLC, another entity affiliated with
15 SK Foods that is owned and controlled by Scott Salyer, entered into a contract for the purchase
16 of 642.81 acres of land in Colusa County with Frank Rogers, Robin Myers, and Lynco Farms
17 (“Rogers Parcel”) for the sum of Two Million Nine Hundred Fifty Six Thousand Nine Hundred
18 Twenty-Six (\$2,926,926.00) Dollars. The purchase agreement for the Rogers Parcel
19 contemplated that the buyer would pay a \$140,000 earnest money deposit, pay an additional
20 \$1,530,942.00 prior to the close of escrow, and assume liability for a \$1,286,000 note secured by
21 the property. The purchase agreement for the Rogers Parcel provided that escrow would be
22 opened at Placer Title Co. in Yuba City, California.

23 31. The Trustee is informed and believes that the Rogers Parcel was acquired
24 for the purpose of providing SK Foods with land upon which it could discharge wastewater.

25 32. The Trustee is informed and believes and based thereon alleges that the
26 initial \$140,000 earnest money deposit was paid using funds coming directly or indirectly from
27 SK Foods.

1 33. On July 6, 2005, SK Foods wired \$1.5 million directly from its account at
2 Harris Bank, N.A. to Placer Title Co. with the wire instructions specifically referencing Escrow
3 No. 1201-18075. A true and correct copy of the said wire instructions is attached hereto as
4 **Exhibit 6**, and is incorporated herein by this reference.

5 34. Escrow closed for the purchase of the Rogers Parcel, and a deed
6 conveying the Rogers Parcel to Defendant SSC Farming, LLC was recorded on July 13, 2005. A
7 true and correct copy of the grant deed conveying the Rogers Parcel to SSC Farming is attached
8 hereto as **Exhibit 7**, and is incorporated herein by this reference. The Trustee is informed and
9 believes and based thereon alleges that Defendant SSC Farming, LLC contributed no
10 consideration toward the purchase of the Rogers Parcel, and that it was not a party to the contract
11 for the purchase of the Rogers Parcel.

12 35. On or about May 1, 2008, SSC Farming, LLC entered into certain
13 Discharge Agreement pursuant to which SK Foods was permitted to discharge waste water on a
14 592.2 acre portion of the Rogers Parcel. A true and correct copy of the Rogers Parcel Discharge
15 Agreement is attached hereto as **Exhibit 8**, and is incorporated herein by this reference.

16 36. The Rogers Parcel Discharge Agreement provided that SK Foods would
17 pay SSC Farming an annual base discharge fee equal to Four Hundred (\$400.00) Dollars per acre
18 each year for a period of ten (10) years. The Discharge Agreement further provided that the base
19 fee for the discharge of wastewater would increase 15% every three years commencing in 2011.
20 Over the expected duration of the Rogers Parcel Discharge Agreement, SK Foods would pay
21 Defendant SSC Farming over Two Million Three Hundred Seventy Thousand (\$2,370,000.00)
22 Dollars, a sum nearly twice the principle balance of the mortgage SSC Farming assumed on the
23 Rogers Parcel, before taking into account the scheduled increases in the discharge fees.

24 37. The Trustee is informed and believes and based thereon alleges that SK
25 Foods was the ultimate source of the funds used to acquire the Rogers Parcel, and that the Rogers
26 Parcel Discharge Agreement constitutes in economic substance a vehicle through which SK
27 Foods would pay the entire purchase price and all expenses associated with ownership of the
28 Rogers Parcel.

1 38. The Trustee is informed and believes and based thereon alleges that Scott
2 Salyer was aware of the significance of the Rogers Parcel to SK Foods' ability to discharge
3 wastewater, and that he was aware that by virtue of the series of transactions described in
4 Paragraphs 30 through 37 SK Foods' resources alone would be utilized to acquire the Rogers
5 Parcel. By virtue of this knowledge and his position as CEO of SK Foods, Scott Salyer was a
6 fiduciary for SK Foods, and as such, he had a duty to ensure that title to the Rogers Parcel was
7 taken in SK Foods name. Scott Salyer breached his fiduciary obligations to SK Foods by
8 causing or permitting title to the Rogers Parcel to be taken in the name of SSC Farming.
9 Because Scott Salyer owned and controlled SSC Farming and SSC Farming was the instrument
10 through which Scott Salyer carried out his breach, SSC Farming should be deemed Scott
11 Salyer's alter ego such that his breach of fiduciary obligations owed to SK Foods should be
12 imputed to SSC Farming. Alternatively, by acting in concert with Scott Salyer to acquire the
13 Rogers Parcel, SSC Farming aided and abetted Scott Salyer's breach of his fiduciary duty to SK
14 Foods.

15 39. By permitting SSC Farming to take title to the Rogers Parcel created a
16 situation where SSC Farming had the ability to control Debtor's ability to operate despite the fact
17 that SK Foods, rather than SSC Farming, paid for the Rogers Parcel. In 2009, SSC Farming
18 ultimately took advantage of this situation by purporting to terminate Debtor's ability to
19 discharge wastewater on the Rogers Parcel.

The Tiahart Parcel

21 40. On March 17, 2005, SS Farms entered into an agreement to purchase a
22 229.09 acre parcel of real estate located in Colusa County from Elmer and Ronald Tiahrt (“Tiahrt
23 Parcel”) for the sum of Six Hundred Ninety-Eight Thousand Seven Hundred Twenty-Five
24 (\$698,725.00) Dollars. The purchase agreement for the Tiahrt Parcel contemplated that the
25 buyer would pay a \$10,000 earnest money deposit, pay an additional \$688,725.00 prior to the
26 close of escrow.

27 41. The Trustee is informed and believes that the Tiahrt Parcel was acquired
28 for the purpose of providing SK Foods with land upon which it could discharge wastewater.

1 42. On or about April 28, 2005, SK Foods transferred the sum of \$700,000.00
2 to SS Farms, which funds were subsequently transferred to Placer Title Co. for the purpose of
3 purchasing the Tiahrt Parcel.

4 43. Escrow closed for the purchase of the Tiahrt Parcel, and a deed conveying
5 the Tiahrt Parcel to Defendant SSC Farming, LLC was recorded on May 5, 2005. A true and
6 correct copy of the grant deed conveying the Tiahrt Parcel to SSC Farming is attached hereto as
7 **Exhibit 9**, and is incorporated herein by this reference. The Trustee is informed and believes
8 and based thereon alleges that Defendant SSC Farming, LLC contributed no consideration
9 toward the purchase of the Rogers Parcel, and that it was not a party to the contract for the
10 purchase of the Tiahrt Parcel.

11 44. The Trustee is informed and believes and based thereon alleges that Scott
12 Salyer was aware of the significance of the Tiahrt Parcel to SK Foods' ability to discharge
13 wastewater, and that he was aware that by virtue of the series of transactions described in
14 Paragraphs 40 through 43 SK Foods' resources alone would be utilized to acquire the Tiahrt
15 Parcel. By virtue of this knowledge and his position as CEO of SK Foods, Scott Salyer was a
16 fiduciary for SK Foods, and as such, he had a duty to ensure that title to the Tiahrt Parcel was
17 taken in SK Foods name. Scott Salyer breached his fiduciary obligations to SK Foods by
18 causing or permitting title to the Tiahrt Parcel to be taken in the name of SSC Farming. Because
19 Scott Salyer owned and controlled SSC Farming and SSC Farming was the instrument through
20 which Scott Salyer carried out his breach, SSC Farming should be deemed Scott Salyer's alter
21 ego such that his breach of fiduciary obligations owed to SK Foods should be imputed to SSC
22 Farming. Alternatively, by acting in concert with Scott Salyer to acquire the Tiahrt Parcel, SSC
23 Farming aided and abetted Scott Salyer's breach of his fiduciary duty to SK Foods.

24 **FIRST CLAIM FOR RELIEF**

25 **Quiet Title to the Lemoore Wastewater Parcel, the Rogers Parcel, and the Tiahrt Parcel**

26 **Cal. Code Civ. Proc. §760.020**

27 45. The allegations of Paragraphs 1 through 44 are incorporated and re-alleged
28 as if set forth in full herein.

1 46. By virtue of providing the consideration for the purchase of the Lemoore
2 Wastewater Parcel, the Rogers Parcel, and the Tiahrt Parcel, SK Foods is the holder of equitable
3 title to said parcels of real property.

4 47. SK Foods was wrongfully deprived of legal title to the Lemoore
5 Wastewater Parcel, the Rogers Parcel and the Tiahrt Parcel by virtue of Scott Salyer's breach of
6 his fiduciary obligations to SK Foods and the actions of Defendants SSC Farms I, SSC Farms II,
7 and SSC Farming acting in concert with Scott Salyer.

8 Wherefore, Trustee prays for relief as set forth below.

9 **SECOND CLAIM FOR RELIEF**

10 **Declaratory Relief**

11 48. The allegations of Paragraphs 1 through 47, are incorporated and re-
12 alleged as if set forth in full herein.

13 49. An actual controversy exists between the Trustee on the one hand, and
14 Defendants SSC Farms I, LLC, SSC Farms II, LLC, and SSC Farming, LLC on the other hand,
15 concerning the true ownership of the Lemoore Wastewater Discharge Parcel, the Rogers Parcel,
16 and the Tiahrt Parcel.

17 50. Because the Lemoore Wastewater Discharge Parcel, the Rogers Parcel,
18 and the Tiahrt Parcel were acquired for SK Foods' benefit, SK Foods paid the purchase price for
19 said parcels either directly or through its obligations under the Discharge Agreements, and
20 because Defendants acquired their interests in said parcels for no consideration, and SK Foods
21 was deprived of full ownership of said parcels due to the violations of its rights by Defendants
22 and Scott Salyer, including their breach of fiduciary duties owed to SK Foods, SK Foods is
23 entitled to a declaration that it is the true owner of the entire legal and equitable interest in the
24 Lemoore Wastewater Discharge Parcel, the Rogers Parcel, and the Tiahrt Parcel, and therefore,
25 said real property is property of the SK Foods' bankruptcy estates.

26 Wherefore, Trustee prays for relief as set forth below.

27 //

28 //

THIRD CLAIM FOR RELIEF

Turnover of Property of the Estate

Pursuant to 11 U.S.C. §§ 542

4 51. The allegations of Paragraphs 1 through 50, are incorporated and re-
5 alleged as if set forth in full herein.

6 52. Defendants are in possession of the Lemoore Wastewater Discharge
7 Parcel, the Rogers Parcel, and the Tiahrt Parcel, which real property constitutes property of the
8 Debtors' bankruptcy estates pursuant to 11 U.S.C. § 541(a).

9 53. Defendants are obligated under 11 U.S.C. § 542 to turn over the Lemoore
10 Wastewater Discharge Parcel, the Rogers Parcel, and the Tiahrt Parcel to the Trustee.

11 Wherefore, Trustee prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Trustee asks this Court for a judgment, as follows:

14 1. On the First Claim for Relief, for judgment quieting title to the Lemoore
15 Wastewater Parcel, the Rogers Parcel, and the Tiahrt Parcel in the Trustee;

16 2. On the Second Claim for Relief, for judgment declaring SK Foods to be the true
17 owner and holder of the entire legal and equitable interests in the Lemoore Wastewater Parcel,
18 the Rogers Parcel, and the Tiahrt Parcel;

19 3. On the Third Claim for Relief, for judgment ordering Defendants to turn over the
20 Lemoore Wastewater Parcel and the Rogers Parcel to the Trustee; and

21 4. For such other relief as may be just and required, including relief appropriate
22 pursuant to 11 U.S.C. § 105

23 | Dated: October 23, 2009

SCHNADER HARRISON SEGAL & LEWIS LLP

By: /s/ Kevin w. coleman

Kevin W. Coleman

Attorneys for Bradley D. Sharp,
Chapter 11 Trustee